

STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

PETITION OF STATE OF NEW HAMPSHIRE
FOR DECLARATORY JUDGMENT

and

PETITION OF STATE OF NEW HAMPSHIRE
FOR MODIFICATION OF THE BARGAINING
UNIT FOR THE DEPARTMENT OF SAFETY

CASE NOS. S-0344 & S-0315:1

DECISION NO. 79004

APPEARANCES

Representing the State of New Hampshire:

David Marshall, Assistant Attorney General
John Ratoff, State Negotiator

Representing the State Employees' Association:

Richard E. Molan, Assistant Executive Director

BACKGROUND

These are two petitions by the State of New Hampshire to the Public Employee Labor Relations Board which consider the same issue, generally and as to a specific State Department. In the petition for declaratory judgment, the State asks whether pre-existing, grandfathered bargaining units which existed before the adoption of RSA 273-A and were constituted without regard to the provisions of that statute can be the subject of petitions for modification in light of the amendment of RSA 273-A passed by the legislature to indicate that no revisions could be made to such units prior to August 23, 1978. The second and related petition requests a modification of the bargaining unit of the classified state employees' in the Department of Safety to remove Charles Desmaris, the Department of Safety personnel officer and, coincidentally, a member of the State Negotiating Committee, from the unit.

A hearing was held on the petitions at the offices of the Board in Concord on February 14, 1979. At the hearing, the motion of the State to amend its petition concerning the Department of Safety to remove the position of personnel officer rather than the individual occupying that position from the unit was allowed by the Board. After that amendment, the State Employees' Association conceded that the position of personnel officer in the Department was inconsistent with the rules of the Board and the law concerning proper composition of bargaining units and should be removed if a modification of the unit was in order. The related questions before the Board concerning these matters are what effect a petition for modification would have if there is a pre-existing contract between the parties and what effect membership on the State Negotiating Committee would have on membership in a bargaining unit, Mr. Desmaris, the individual involved in the Department of Safety, having been appointed to the State Negotiating Committee by Governor Meldrim Thomson as one of the State Representatives on that Committee, and not as a part of this specific position with the Department of Safety.

FINDINGS

As all parties conceded at the hearing, the answer to the question posed by the Declaratory Judgment petition is that petitions for modification of pre-existing, grandfathered bargaining units can in fact be presented to the Board under the amended statute.

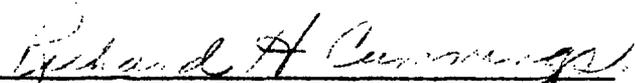
Moving to the issue of the personnel officer in the Department of Safety, as stated above, the parties conceded that that position is a confidential one which would properly be removed from the bargaining unit under the law, rules and Board decisions (see Keene State College PAT Staff Association and University System of New Hampshire, Keene State College, PELRB Decision No. 780007). Nevertheless, in a case such as the one before the Board, when there is a pre-existing collective bargaining agreement in effect which covers the individual whose position is sought to be removed, the effect of such removal will in no way disturb that agreement or rights of the person or position under that agreement. Any removal or modification of a bargaining unit will operate prospectively only, to effect future elections, future negotiations and the like. This Board will not disturb contract rights under collective bargaining agreements during the lives of those agreements.

As to the question of the effect of the appointment of Charles Desmaris to the State Negotiating Committee by Governor Meldrim Thomson, the Board need not reach that issue since his position has been removed from the bargaining unit by this agreement and therefore as an individual he no longer had any conflict with the bargaining unit in future negotiations, which was the concern addressed by seeking to remove him as a member of the State Negotiating Committee from the bargaining unit. Should an actual case arise in which a member of the State Negotiating Committee is alleged to be in an inconsistent position as a member of a bargaining unit, the Board will address the question if posed to it.

ORDER

The Board issues the following order:

1. The Board holds that the Department of Safety Classified Employees Bargaining Unit shall be modified. The position of personnel officer is removed from the bargaining unit of the classified employees of the New Hampshire Department of Safety, said removal and reconstituted bargaining unit to operate prospectively for future elections, negotiations and contracts.
2. The Board holds that petitions for modification of grandfathered units may be submitted consistent with Board rules and other provisions of law on the composition of bargaining units. See Keene State College PAT Staff Association and University System of New Hampshire, Keene State College, PELRB Decision No. 780007.



RICHARD H. CUMMINGS, ACTING CHAIRMAN
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 22nd day of February, 1979

Members Moriarty, Anderson and Mayhew also voting. All concurred. Board Clerk Evelyn LeBrun and Board Counsel Bradford Cook also present.